

December 2, 2021

Regional Freedom of Information Officer
U.S. EPA, Region 6
1445 Ross Avenue (6MD-OE)
Dallas, TX 75202-2733
Tele: (214) 665-7202
Email: r6foia@epa.gov
Via FOIAonline.gov

Re: Freedom of Information Act Request for Records Related to Select LNG Facilities

Dear EPA FOIA Officer,

On behalf of Healthy Gulf,¹ and in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, we submit this request for the following records in the possession, custody or control of the U.S. EPA Region 6:

- **All public comments submitted in response to public notices published in the New Orleans and Galveston Districts of the U.S. Army Corps of Engineers for the 23 below-listed Liquefied Natural Gas (LNG) facilities and LNG support facilities:**

PN (New Orleans)	Notice Date	Applicant	Parish / County
MVN-2015-02191-WKK	2/21/2017	APB Land Resources LLC	Calcasieu
MVN-2013-02424-MB	6/28/2016	PORT CAMERON, LLC	Cameron
MVN-1998-03311-MG	5/9/2016	Lake Charles Harbor & Terminal District	Calcasieu
MVN-2002-03266-WII	5/9/2016	Cameron LNG, LLC	Cameron, Calcasieu
MVN-2014-01380-WII	8/17/2015	Magnolia LNG, LLC	Calcasieu
MVN-2014-01575-MB	5/8/2015	Lake Charles LNG Company	Calcasieu, Jefferson Davis, Acadia, Cameron, Allen, and Beauregard
MVN-2014-00115-WII	1/12/2015	Enterprise Products Operating LLC	Calcasieu, Jefferson Davis, Acadia, Vermilion, Lafayette, and St. Martin
MVN-2013-02522-WII	11/24/2014	Cheniere Energy	Calcasieu, Beauregard, Allen, and Evangeline
MVN-2014-338-EPP	6/2/2014	Enterprise Products Operating	St. Charles
MVN-2013-02944-WII	5/19/2014	Enterprise Products Operating LLC	Assumption, Ascension, Iberville, and St. Martin

¹ Healthy Gulf is a 501(c)(3) nonprofit organization composed of a network of local, regional and national environmental and public interest groups dedicated to uniting people to protect and restore the natural resources of the Gulf Region.

MVN-2014-00073-WII	4/7/2014	Enterprise Products Operating LLC	Calcasieu
PN (Galveston)	Notice Date	Applicant	Parish / County
SWG-2015-00175	11/1/2018	Texas LNG Brownsville, LLC	Cameron
SWG-2015-00114	10/18/2018	Rio Grande LNG, LLC, and Rio Bravo Pipeline, LLC	Cameron
SWG-2008-00497	10/4/2018	Port Arthur LNG Common Facilities Company, LLC	Jefferson
SWG-2013-00147	8/21/2018	Freeport LNG Development, L.P.	Brazoria
SWG-2013-00147	5/23/2017	Freeport LNG Development, L.P.	Brazoria
SWG-2004-02523	5/5/2016	Sabine Pass LNG, Inc.	Cameron Parish
SWG-2004-02118	5/3/2016	Golden Pass Products and Golden Pass Pipeline (GPX)	Jefferson
SWG-2013-00147	2/12/2015	Freeport LNG Development, L.P.	Brazoria
SWG-2013-00147	2/12/2015	Freeport LNG Development, L.P.	Brazoria
SWG-2014-00848	12/16/2014	Cheniere Liquids Terminal	San Patricio
SWG-2013-00147	10/29/2013	Freeport LNG Development, L.P.	Brazoria
SWG-2004-02523	11/28/2012	Sabine Pass LNG	Cameron

For the purposes of this request, the terms “records” or “documents” includes all written, printed, recorded or electronic materials, communications, emails, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, evaluations, findings, contracts, letters, reports studies, assessments, messages and mail in the possession or control of EPA, Region 6.

We request, and FOIA requires, a determination on this record request within twenty (20) working days after your receipt of this request. In your response, please include all reasonably segregable portions of exempt records that are themselves not exempt from disclosure. Should our record request be denied, we ask that you inform us of the grounds for denial, citing specific exemptions and privileges, and the specific administrative appeal rights which are available.

We also request that processing fees be waived because Healthy Gulf is primarily interested in public dissemination of this information to inform the public regarding the nature of wetlands impacts of fossil fuel infrastructure development and the increasing danger these facilities pose to surrounding communities in the Gulf region, and because the request is not primarily in the commercial interest of the requestor. *See* 43 C.F.R. § 2.19. We have attached a letter requesting a fee waiver (Attachment A) that documents our entitlement under the regulations.

We would prefer your response to be in universal form and electronic form if possible. Please contact me prior to copying or production if that is unavailable. For any other information that may be needed, please contact Misha Mitchell by e-mail at basinkeeperlegal@gmail.com.

Sincerely,



Misha L. Mitchell, Esq.
La. Bar. No. 37506
411 Walnut Street #15255
Green Cove Springs, FL 32043
Phone: (205) 540-2182
Email: basinkeeperlegal@gmail.com

On behalf of Healthy Gulf
Scott Eustis, Community Science Director

ATTACHMENT A

Re: Request for Waiver of Fees – 12.2.21 FOIA Request for Records Related to Select LNG Facilities

To Whom It May Concern:

This letter accompanies a request for records submitted in accordance with the Freedom of Information Act (FOIA, 5 U.S.C. § 522), submitted December 2, 2021 on behalf of Healthy Gulf in order to supplement the fee waiver request within. Healthy Gulf requests public comment records related to 23 named, permitted LNG and LNG supporting facilities in the Gulf region. In consideration of Healthy Gulf's status as a nonprofit, public interest organization, and its intent to disseminate the requested information to contribute to public understanding of the permitting process of these facilities that impact countless communities across the region, Healthy Gulf requests that fees associated with processing its request be waived. Below, we address the criteria for fee waivers under Bureau regulations. *See* 43 C.F.R. § 2.19(b). We believe the information herein fully satisfies the fee waiver requirements.

Under FOIA, a disclosure is in the public interest if (1) "it is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requestor." *See* 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's legislative history is explicit that the fee waiver provision should be "liberally construed in favor of waivers for noncommercial requestors." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). *See also Coalition for Safe Power v. U.S. Dep't of Energy*, Civ. No. 87-1380PA, slip op. at 7 (D.Or. July 22, 1988) (citing *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986)) (By enacting the fee waiver provision of FOIA, "Congress explicitly recognized the importance and the difficulty of access to governmental documents for under-funded organizations and individuals."). The main purpose of the fee waiver provision is "to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers. . . ." *Id.* Here, Healthy Gulf satisfies both prongs of the public interest inquiry.

First, disclosure will "contribute significantly to public understanding of the operations or activities of the government" because Healthy Gulf will disseminate the information it receives to its members, supporters and collaborators. *See Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994) ("[t]he relevant inquiry . . . is whether the requestor will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject."). Moreover, EPA is responsible for administering the Clean Water Act, and thus Healthy Gulf's request directly concerns identifiable operations and activities of the federal agency.

Healthy Gulf is a regional non-profit, charitable organization that has spent years promoting the public interest through the development of policies that provide enhanced environmental protection, and has routinely received fee waivers under FOIA. This is in large part because the organization has repeatedly proven its ability to disseminate the information it obtains through FOIA to large segments of the public by means of membership correspondence, multiple publications, our website (<http://healthygulf.org>) which is visited by millions of people each year,

numerous educational programs and media initiatives, and congressional testimony. We intend to use many of these means to educate the public concerning the information contained in the records requested here, a matter of great interest and importance to all Americans. Healthy Gulf intends to disseminate the information at its own expense.

Healthy Gulf anticipates using the information requested to educate the public and promote discussion and dissemination of information pertaining to the nature of wetlands impacts of fossil fuel infrastructure development, the increasing danger these facilities pose to surrounding communities in the Gulf region, and the government's responsiveness to significant and important concerns raised by the public regarding proposed fossil fuel projects. Moreover, Healthy Gulf will share the information and collaborate with other public interest organizations which perform similar advocacy work and who, in turn, will share the information with their respective memberships to promote agency and permittee accountability, efficacy and transparency, as well as public involvement in the Clean Water Act Section 404 wetlands permitting process, particularly for LNG and LNG supporting facilities in the Gulf region.

Second, the disclosure of the information is in the public interest and "is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii). Healthy Gulf has no commercial interest in the information requested. Healthy Gulf is a tax-exempt, nonprofit organization that intends to use the information to educate the public about activities of the government. "Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requestors." *Judicial Watch*, 326 F.3d at 1312 (internal citation omitted); *see also Judicial Watch v. Dept. of Energy*, 310 F. Supp. 2d 271, 291 (D.D.C. 2004) ("[T]he public interest exception should be viewed in an expansive manner"). Healthy Gulf's interest in the requested records is to educate and inform the public, their members and partners regarding the process the federal government undertakes to comply with the Clean Water Act and National Environmental Policy Act.

In consideration of the above-referenced qualifications showing satisfaction of both prongs of the public interest inquiry, please waive all processing and copying fees as the above satisfies the requirements of 5 U.S.C. § 552 (a)(4)(A)(iii) and 43 C.F.R. 2.19. Nothing in this letter will constitute any waiver of our right to seek administrative or judicial review of any denial of our fee waiver request.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me by e-mail at basinkeeperlegal@gmail.com. Thank you for your assistance with this request. I look forward to your prompt response.

Sincerely,



Misha L. Mitchell, Esq.
La. Bar. No. 37506
411 Walnut Street #15255

Green Cove Springs, FL 32043
Phone: (205) 540-2182
Email: basinkeeperlegal@gmail.com

On behalf of Healthy Gulf
Scott Eustis, Community Science Director